In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-101

EARL CHRISTOPHER HUNTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Indiana, petitioner and one co-defendant were convicted of conducting an illegal gambling business and of conspiring to commit the substantive offense, in violation of 18 U.S.C. 1955 and 371.[1] He was fined $5,000 and sentenced to six months of imprisonment and two and one-half years of probation on the conspiracy count; he was given a concurrent three-year prison term on the substantive count, but that sentence was suspended and petitioner was placed on probation for three years. The court of appeals affirmed the conviction on the substantive count, but it

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[1]Shortly after the trial commenced, the same charges were dismissed against one co-defendant and eleven other co-defendants pleaded guilty.

reversed the conspiracy conviction on the ground that the conspiracy had merged with the completed offense.[2]

Petitioner contends that 18 U.S.C. 1955 is unconstitutional because it permits conviction for operating an illegal gambling business without requiring proof in each case that the particular gambling operations affected interstate commerce. The opinion of the court below, upon which we rely, carefully considered and correctly rejected this claim. As noted by the court (Pet. App. 26), its holding is in agreement with the position uniformly adopted in other circuits on this question.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

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[2]The government's application in this case for an extension of time within which to file a cross-petition on this issue was denied by Mr. Justice Rehnquist on July 9, 1973.

[3]Petitioner also claims, without elaboration, that there were authorization defects in the applications, made pursuant to 18 U.S.C. 6003(b), for the grants of immunity to two trial witnesses. Petitioner, however, did not preserve this claim below and, in any event, has no standing to complain of any such alleged defects. Neither his privilege against self-incrimination nor his rights under the Due Process Clause would be implicated by a technical defect in the Justice Department's process of authorizing an application for immunity for witnesses at his trial. Only the rights of the witnesses themselves would be affected, and they alone would have standing to complain of the defect. Cf. *Alderman* v. *United States*, 394 U.S. 165, 173-175.